

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

VERNON McCARTY,	:	CASE NO. 4:07-CV-3120
	:	
Petitioner,	:	
	:	
vs.	:	OPINION & ORDER
	:	[Resolving Docs. No. 1 , 18 , 21]
J.R. SHARTLE,	:	
	:	
Respondent.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

With this Opinion and Order, the Court decides whether to adopt the Report and Recommendation of Magistrate Judge James S. Gallas on the Petitioner's application for writ of habeas corpus and the Respondent's motion to dismiss the same. [Docs. [1](#), [18](#).]

For the reasons stated below, the Court **ADOPTS** the Report and Recommendation of Magistrate Judge Gallas, **GRANTS** the Respondent's motion to dismiss, and **DISMISSES** the instant petition for habeas corpus relief.

On October 11, 2007, Petitioner McCarty filed his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. [Doc. [1](#).] In his petition, the Petitioner alleges that the Respondent has violated his Eighth Amendment rights by failing to properly procure medical treatment and by acting with deliberate indifference towards his medical needs. *Id.* On October 18, 2007, the Court referred the Petitioner's application to Magistrate Judge James S. Gallas for a Report and Recommendation. [Doc. [4](#).] On December 3, 2007, the Magistrate held a telephone conference at which the details of

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the Petitioner's medical history were discussed. [Doc. [17](#).] On December 27, 2007, the Respondent filed a motion to dismiss the case. [Doc. [18](#).] On January 10, 2008, the Magistrate held a second telephone conference at which the basis for the Respondent's motion to dismiss and the medical care provided to the Petitioner while incarcerated were discussed. [Doc. [19](#).] At the hearing's conclusion, the Magistrate Judge instructed the Petitioner to file a response to the motion to dismiss by February 11, 2008. *Id.* The Petitioner has not filed a response.

On June 19, 2008, Magistrate Judge Gallas recommended that this Court grant the motion to dismiss the Petitioner's habeas case for failure to state a claim upon which relief can be granted and because it "plainly appears" that the Petitioner is not entitled to relief. [Doc. [21](#).] The Petitioner has not objected to the Magistrate's Report and Recommendation.

The Federal Magistrates Act requires a district court to conduct a de novo review only of those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)](#). Parties must file any objections to a Report and Recommendation within ten days of service. *Id.* Failure to object within that time waives a party's right to appeal the magistrate judge's recommendation. See [Fed. R. Civ. P. 72\(a\)](#); [Thomas v. Arn, 474 U.S. 140, 145 \(1985\)](#); [United States v. Walters, 638 F.2d 947 \(6th Cir. 1981\)](#). Absent objection, a district court may adopt the magistrate's report without review. [Thomas, 474 U.S. at 149](#).

Moreover, having conducted its own review of the filings, facts, and findings in the case, the Court agrees with the conclusions of Magistrate Judge Gallas. Accordingly, the Court adopts the Report and Recommendation as its own, and incorporates the Magistrate Judge's findings of fact and conclusions of law fully herein by reference.

For these reasons, the Court **ADOPTS** the Magistrate's Report and Recommendation,

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GRANTS the Respondent's motion to dismiss, and **DISMISSES** the Petitioner's application for writ of habeas corpus.

IT IS SO ORDERED.

Dated: July 15, 2008

s/ *James S. Gwin*
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE